REMARKS

I. Introduction

Claims 7 to 20 are pending in the present application. Applicants note with appreciation the indication that claims 9 and 10 are allowed.

In view of the foregoing remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

II. Rejection of Claims 7, 8 and 11 to 20 Under 35 U.S.C. § 103(a)

Claims 7, 8 and 11 to 20 were finally rejected under 35 U.S.C. § 103(a) as unpatentable over Yamaguchi et al., U.S. Patent No. 4,345,558. Applicants respectfully submit that Yamaguchi et al. do not render unpatentable the present claims for the following reasons.

In the previous response, Applicants indicated that Yamaguchi et al. do not disclose, or even suggest, filtering a power determining signal, which is determined in a step of "determining a power determining signal from a position of an operating element of the drive unit of the vehicle," with a filter including at least one high-pass filter and at least one low-pass filter connected in parallel, as recited in independent claim 7.

The "Response to Arguments" section of the Final Office Action does not address this, but merely alleges that the section of Yamaguchi et al. at col. 16, lines 23 to 34 discloses the feature of "determining a power signal from a position of an operating element." Thus, at the outset, it is noted that whether or not Yamaguchi et al. disclose the feature of determining a power signal from a position of an operating element -- which Applicants do not concede -- it does not disclose, or even suggest, the claimed feature of ***filtering*** *the power determining signal* with a filter including at least one high-pass filter and at least one low-pass filter connected in parallel.

In the cited section, Yamaguchi et al. refer to detecting an engine load condition as an engine condition parameter and then applying the resulting signal to a filter control circuit. In this section, the engine load parameter is used as a substitute for a vibration noise level since, as stated, "the noise tends to increase with an increase in load." Yamaguchi et al. col. 16, lines 25 to 26. But in this context, the reason either the vibration noise level or engine load parameters are

used is "**to effect filter selection**." Col. 16, lines 2 to 3. Importantly, filter selection, in the context of Yamaguchi et al., is the selection of either a high band-pass filter or a low band-pass filter according to the level of vibration noise in order to achieve a better signal-to-noise ratio. See Yamaguchi et al., col. 15, line 46 to col. 16, line 34. Therefore, on careful review of the reference, it is clear that Yamaguchi et al. use a signal indicative of an engine load (or power) to select a high pass band versus a low pass band filter and do not actually use either filter to alter or modify the engine load signal.

This is in contrast with what is claimed in the present application in which the power determining signal is filtered with a filter including at least one high-pass filter and at least one low-pass filter connected in parallel. The specification describes an embodiment of this process as follows:

> In the embodiment illustrated here, a first high-pass filter generates a positive quantity pulse in the transition to larger quantities and a negative quantity pulse in the transition to lower quantities. The second high-pass filter generates an inverse quantity pulse with a time lag. The low-pass filter connected in parallel relays the corresponding quantity request directly with a given characteristic. Output signal QKF of filter means 120 as illustrated in Subfigure 3a is obtained by addition of these three filtered signals.
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> Two corresponding quantity pulses can occur in the transition to an altered quantity request. In other words, in the transition to an increased quantity, there is first a positive quantity pulse and then a negative quantity pulse, and in the transition to smaller quantities there is first a negative quantity pulse and then a positive quantity pulse. This guarantees that no load shock will occur.

Specification, page 7, line 31 to page 8, line 11; emphasis added.

According to the above-quoted passages, it can be seen that eliminating load shock may be achieved by filtering an input signal (QK) indicative of a measure of the power desired from the engine, resulting in a modified output signal (QKF) which is then supplied to an actuator and/or controller. It is again emphasized that, in contrast to Yamaguchi et al., the power determining signal is not used to select a filtration band for modifying another signal, but is itself the signal that is filtered and thereby modified.

As regards "filtering the power determining signal with a filter, the filter including at least one high-pass filter and at least one low-pass filter connected in parallel," the Final Office Action merely refers to Figure 13. However, Yamaguchi et al. state that "[reference] numeral 308 designates a filter circuit which receives the output signals of a vibration detector 2 and has a plurality of band-pass filter characteristics and in which the filters are selectively operated by externally applied signals." Col. 10, lines 61 to 65. Yamaguchi et al. further state that the filter circuit 308 includes "a pair of band-pass filters 681 and 682 respectively having bands of 7 to 10 kHz and 11 to 13 kHz, analog switches 683 and 684, and a NOT gate 685, whereby the filter constant for the output of the vibration detector 2 is changed to a low filter value (7 to 10 kHz) or a high filter value (11 to 13 kHz) in accordance with the output of the filter control circuit 310." Col. 12, line 67 to col. 12, line 6. Applicants respectfully submit that the description of a vibration detector 2 by Yamaguchi et al. does not constitute a disclosure or suggestion of "determining a power determining signal from a position of an operating element," and, therefore, it is respectfully submitted that the description by Yamaguchi et al. of the filter circuit 308 does not constitute a disclosure, or even a suggestion, of "filtering the power determining signal with a filter, the filter including at least one high-pass filter and at least one low-pass filter connected in parallel" as recited in claim 7.

Thus, it is respectfully submitted that Yamaguchi et al. do not disclose, or even suggest, a method of controlling a drive unit of a vehicle having an actuator element for influencing power provided to the drive unit, in which the method includes determining a power determining signal from a position of an operating element of the drive unit of the vehicle, filtering the power determining signal with a filter, the filter including at least one high-pass filter and at least one low-pass filter connected in parallel, and controlling the actuator element of the drive unit of the vehicle as a function of the filtered power determining signal.

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a prima facie case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish prima facie obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the

application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim limitations. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). As indicated above, Yamaguchi et al. do not disclose, or even suggest, all of the limitations recited in claim 7. It is therefore respectfully submitted that Yamaguchi et al. do not render unpatentable claim 7.

As independent claims 11 and 17 recite analogous features to those recited in independent claim 7, it is respectfully submitted that these claims, and their respective dependent claims 12, 15, 16 and 18 to 20 are also not rendered unpatentable by Yamaguchi et al.

Withdrawal of the rejection of the pending claims based on Yamaguchi et al. is therefore respectfully requested.

III. Conclusion

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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